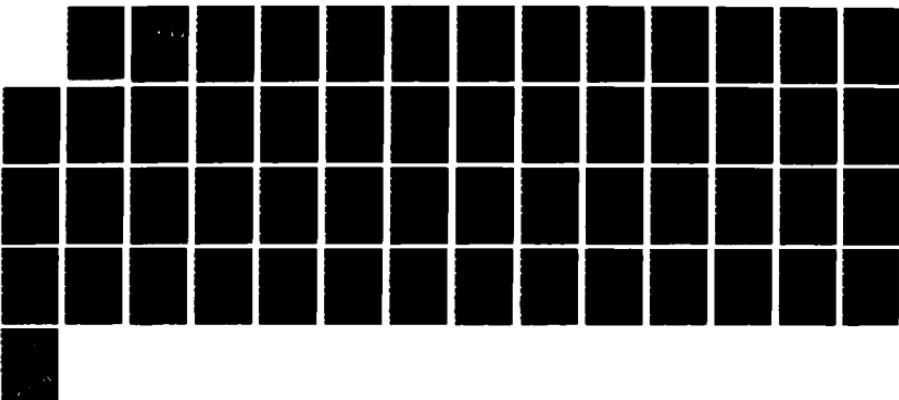


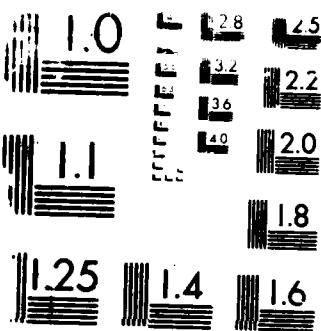
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THESIS

STREAMLINING
INVITATION FOR
BIDS

by

David M. Fitzgerald

December 1987

Thesis Advisor

David V. Lamm

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Streamlining
Invitation for
Bids

by

David M. Fitzgerald
Lieutenant, Supply Corps, United States Navy
B.A., The Citadel, 1979
M.S.B.A., Boston University, 1984

Submitted in partial fulfillment of the
requirements for the degree of

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Author: David M. Fitzgerald
David M. Fitzgerald

Approved by: David V. Lamm
David V. Lamm, Thesis Advisor

Roger D. Evered
Roger D. Evered, Second Reader

David R. Whipple, Chairman,
Department of Administrative Sciences

James M. Freygen,
Acting Dean of Information and Policy Sciences

ABSTRACT

The U.S. Government issues a solicitation document known as the Invitation for Bid (IFB). This is the first step in a process known as Sealed Bidding. The IFB package consists not only of the description of the needed deliverable or service, but also statutes, regulations and assorted legal clauses. The IFB then becomes a voluminous bureaucratic document that is difficult to comprehend by even the most experienced of contractors. This study presented the problems of the IFB from the contractor's and Government's viewpoints with an eye towards streamlining the IFB package to make it more understandable and usable. Suggestions are made towards this end.

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I. INTRODUCTION

A. GENERAL COMMENTS

The Department of Defense (DoD) Acquisition System is a large bureaucracy, built on the foundation of thousands of statutes, regulations and local instructions. It is no secret that those persons involved in the DoD contracting profession must endure formalized training and a continuous education in order to provide quality service. It is this bureaucracy, which generates reams of paper in an effort to acquire anything from a bolt to a complicated nuclear submarine, that impacts on the size of the solicitation document the Government issues to prospective contractors. One such solicitation document is the Invitation for Bids (IFB) and is the first step of a contracting process known as Sealed Bidding (formerly known as Formal Advertising).

Since the IFB package consists not only of the description of the needed deliverable or service, but also statutes, regulations and assorted legal clauses, an average IFB package becomes quite voluminous (some reaching 100 or more pages) and complicated. The recipients of these packages are contractors, both large and small. Their degree of familiarity with DoD contracting regulations, specifically the *Federal Acquisition Regulation* (FAR) and the *Department of Defense Federal Acquisition Regulation Supplement* (DFARS), may range from years of experience to absolutely nothing. The contractors' acquisition staffs may range from a department-sized specialist team (equal to DoD staffs), to the entrepreneurial president being "many-hatted" with himself as the part and parcel of the acquisition "staff". All of these factors lead to a need for examination of the simplification of the IFB package.

The optimum IFB package would be a clear, concise statement of what is needed by the Government, with a minimum of the "boilerplate" or "legalese". To simplify the IFB package would be a major step in the direction of "commercial-type" procurement advocated by the *Packard Commission Report* of 1986 [Ref. 1: pp. 62-64].

B. OBJECTIVE OF THE RESEARCH

The objective of this research is to examine how to streamline the Invitation for Bids (IFB) solicitation package that the U.S. Navy uses in the acquisition process. This study is based on the need derived from current research which indicates that IFB solicitations received by contractors are veritable bureaucratic paperwork nightmares

[Ref. 2]. Currently, IFB packages are very cumbersome documents which include many items as a result of various socio-economic and competitive statutes and regulations. It is not readily apparent how much of the IFB "boilerplate" can be eliminated or streamlined, if any. However, current research indicates that those who answer Government solicitations would gladly welcome a reduction in the size and complexity of the document in order to decrease their effort and paperwork as well as simplify the bidding process for better understanding.

C. RESEARCH QUESTIONS

1. Primary Research Question

- How might the Invitation for Bids (IFB) package be streamlined?

2. Subsidiary Questions

- What are the essential characteristics of the IFB?
- What is the inherent structure of the bid package (i.e., the statutory and regulatory requirements)?
- What are the Government and Navy's concerns in formulating the bid package?
- What are the contractors' difficulties in preparing bids in response to the IFB?
- What methods can and are being utilized by the Government and the Navy to make the bid package, including specifications and drawings, more understandable by the contractors?
- Is the IFB method being utilized by Navy activities?

D. SCOPE, ASSUMPTIONS AND LIMITATIONS OF THE THESIS

The thesis focused on the examination of representative IFB packages in order to ascertain the scope of the need for streamlining. A recent Naval Postgraduate School report titled, *An Analysis of Reasons Companies Refuse to Participate in Defense Business* was reviewed [Ref. 2]. It was assumed that there was a need for streamlining the IFB package from this previous research. In particular, the study's survey of 427 contractors and their replies concerning sealed bidding methods is studied. Government personnel directly involved with policy making as well as execution and contractors were questioned for evidence of this study's objective. The focus is to streamline the bid package, however, findings which indicate the inability to streamline the document are also presented. This study will result in policy or management recommendations.

Although this research extended to interviews with the Office of Federal Procurement Policy, it is limited to U.S. Navy contracting concerns. Only a small

sample of civilian contractors was contacted from the study cited above.¹ However, all contractor's opinions from this study are incorporated. The study examines those areas where, although specifically, Navy improvements can be made to streamline IFBs, the intent is that those recommendations can be applied to other parts of DoD or other agencies with some adaptation. This study does not cover all facets of the sealed bid contracting method which would include exceptions. Rather, this study pertains to a service or item procurement through the sealed bid methodology in the strictest sense of the FAR Part 14. This action thus results in a firm fixed-price contract award to the lowest bidder.

E. METHODOLOGY

Preliminary research included a review of sealed bidding requirements in the FAR Part 14. Representative IFB packages were reviewed. Other existing regulations, instructions, policies, initiatives, reports, studies and books were researched as necessary.

Fact-finding, both telephonically and through personal interviews, was held with individuals from the following activities:

- 1) Office of Federal Procurement Policy
- 2) Assistant Secretary of the Navy for Shipbuilding and Logistics
- 3) Naval Supply Systems Command
- 4) Naval Supply Center Norfolk
- 5) Naval Supply Center Puget Sound
- 6) Naval Supply Center Oakland
- 7) Naval Supply Center San Diego
- 8) Naval Facilities Engineering Command Western Division
- 9) Naval Regional Contracting Center San Diego
- 10) Various Contractors in the Continental United States²

A search of existing contract simplification policy initiatives was also conducted. Legal opinion was sought on streamlining feasibility issues. A streamlined "model" IFB package will be presented as part of this research effort.

¹The small business contractors that were surveyed were selected from those that had previously been contacted by Dr. David Lamm, and had indicated sealed bidding problems, in his study *An Analysis of Reasons Companies Refuse to Participate in Defense Business*.

²Small business contractors from Dr. Lamm's survey data in *An Analysis of Reasons Companies Refuse to Participate in Defense Business*.

F. DEFINITIONS

The following definitions and terms are applicable to an understanding of this study.

- 1) *Sealed Bidding* -"Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards." [Ref. 3: p. 14-1]
- 2) *Preparation of Invitation for Bids* -"Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding." [Ref. 3: p. 14-1]
- 3) *Contract Award* -"After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation." [Ref. 3: p. 14-1]

G. THESIS ORGANIZATION

The organization of this thesis is such that the reader can experience the problems associated with the present IFB method both from the Government's standpoint and from the contractor's standpoint with an eye to improving or streamlining the present IFB package.

The thesis begins with the essential characteristics of the IFB. Thus, Chapter II examines the structure of the IFB, including applicable statutes and regulations. In these requirements, the Government's and the Navy's concerns in formulating the bid package are revealed.

Chapter III presents the nature of the problem and key issues which the Government and contractors encounter in preparing bid invitations and responding to the IFR. It also examines the use of the IFB at Navy field contracting activities.

Chapter IV presents an analysis of streamlining the IFB package and presents those streamlining programs already in place.

Chapter V is a compilation of the researcher's conclusions and recommendations to streamline the IFB package.

II. THE REGULATORY FRAMEWORK

A. STATUTES AND REGULATIONS

The idea of "Sealed Bidding" within the Government has evolved from a number of major statutes enacted by the Congress. In the past, sealed bid contract award has derived its authority from four major statutes. These are:

- 1) The Civil Sundry Appropriations Act of 1861. In this act, the four major provisions include:
 - a) A detailed invitation
 - b) Invitation publication
 - c) Public opening of bids
 - d) Contract award to the responsible bidder with the most advantageous bid to the Government

These provisions still apply in thought today. [Ref. 4: p. 242]

- 2) The Armed Services Procurement Act of 1947 pertaining to DoD, the National Aeronautical and Space Administration (NASA) and the U.S. Coast Guard.³
- 3) The Federal Property and Administrative Services Act of 1949, which pertains to all other Executive Branch agencies.⁴ The United States Code refers to Sealed Bidding by stating: "All purchases and contracts for property and services shall be made by [formal] advertising...."⁵

Formal Advertising is now known as Sealed Bidding, due to the latest major statute enacted by Congress which was:

- 4) The Spending Reduction Act of 1984 which contains the Competition in Contracting Act of 1984 (CICA). This statute brought Sealed Bidding under the umbrella of respectable competitive procurement.⁶

The four procurement statutes are implemented by a myriad of regulations. These regulations are the *Federal Acquisition Regulation* (FAR) [Ref. 3], which gains its authority from the *Code of Federal Regulations*,⁷ and the *Defense Federal Acquisition Regulation Supplement* (DFARS) [Ref. 5]. DoD agencies have their own

³*United States Code*, Title 10, § 2381.

⁴*United States Code*, Title 41, § 252 and 253.

⁵*United States Code*, Title 41, § 252(c).

⁶The Spending Reduction Act of 1984 is known also as PL 98-369.

⁷From the *Code of Federal Regulations*, Title 48.

supplementary procurement regulations, such as the *Navy Acquisition Regulations Supplement* [Ref. 6].

The procurement regulations give advice or information and sometimes "permit" the contracting officer to act in a certain way. However, many of the regulations in sealed bidding "direct" the contracting officer to take action. These are known as "directory provisions" and have been upheld by the Supreme Court as having the force and effect of law. These directory provisions call for standard contract clauses in certain types of contracts and they direct that the clauses either be present or referenced in the contract. [Ref. 7: pp. 25-28]

B. FORMAT

The structure of the IFB is a very rigidly defined regulation. This format is dictated in Part 14 of the FAR and the Uniform Contract Format is shown at Appendix (A). The IFB is primarily used to facilitate "preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders and contractors." [Ref. 3: p. 14-2]

Exceptions to the use of the format are:

- 1) Construction
- 2) Shipbuilding
- 3) Subsistence items
- 4) Supplies or services requiring special contract forms [Ref. 3: p. 14-2]

C. CONDITIONS FOR USE

In utilizing the sealed bid method, the Government contracting officer must have first met the following criteria:

- 1) "A conclusion that there will be more than one qualified supplier willing to compete for and to perform the proposed contract.
- 2) A decision that the requirement is adequately defined to allow competitors to bid for the procurement on an equal basis. Under CICA, a conclusion that it will not be necessary to conduct discussions with offerors was added.
- 3) A conclusion that sufficient time is available to allow the purchase to be accomplished through an orderly solicitation and award process.
- 4) A conclusion that price can be used as an adequate basis for determining the source to be awarded the contract." [Ref. 4: p. 240]

Because of the conciseness and accuracy involved in the above criteria, the IFB is a very traditional document within the procurement system. The Government's

concern in this matter is that the IFB should result in the letting of a contract which provides the Government with products and services at a fair and reasonable price. This is assuming that there is:

- 1) A competitive marketplace with no price regulation by law or otherwise
- 2) The IFB process is carried out according to the intent of the regulations

D. PROCESS

After the contracting officer has determined a valid need for a service or item which has met the four sealed bid conditions above, he is ready to start the IFB process.

The contracting officer prepares the IFB on a Standard Form 33 (see Appendix B) which includes the basic bidding information. He then assembles all information to meet the obligation of the other contract sections (see Appendix A). This includes elements of the schedule such as the item description and specification, packaging details, inspection, delivery, performance and contract administration requirements. Also, contract clauses, special provisions, exhibits and attachments, representations, certifications and instructions to bidders are included. Inclusion of the above items become the bulk of the IFB volume.

The parts of the schedule of the Uniform Contract Format that the contracting officer completes includes the solicitation/contract form which outlines basic information such as time specified for receipt of bids and the IFB number. The supplies or services and prices section includes a brief description of the supplies or services and the quantities. The descriptions/specifications section includes any further detail or specifications in addition to the previous section. The contracting officer can use existing specifications but he must make sure that they are accurate and not too restrictive. This is to permit full and open competition and to allow bidders to offer bids that are economically sound. Any Statement of Work (SOW) descriptions must be adequate and must state the customers exact need. Packaging and marking sections are self-explanatory. The inspection and acceptance section describes the contracting officer's quality assurance and reliability requirements. Deliveries or performance specifies the time, place and mode of delivery. Special contract administration requirements are entered in Section G of Appendix A. Any special contract requirements not covered in the contract clauses or other areas are inserted in Section H.

In Part II, the contracting officer includes clauses, in entirety or referenced, that are called for by law or by the FAR regulations.

In Part III, the contracting officer lists any documents, exhibits or attachments.

In Part IV, the contracting officer shall prepare solicitation provisions that require the bidder to present representations or certifications. In addition, Section L includes any provisions and instructions to bidders not included in other sections. Finally, Section M incorporates the price-related factors other than bid price that are evaluation factors for ultimate award of the contract.

When the IFB package is completed, after many hours of preparation, the contracting officer must publicize the solicitation document. If the total dollar value is greater than \$25,000.00, he must publicize it for at least fifteen days in advance of issuance, through synopsis of the IFB in the U.S. Department of Commerce's newspaper, *Commerce Business Daily* (CBD). The award of the IFB cannot be made less than thirty days after publication to allow for response time and receipt of bids [Ref. 3: p. 5-3]. During the publication period it is assumed that those interested bidders will request an IFB package. The contracting officer will have sent IFB packages to all contractors who have submitted an application and are on the agency's bidders list. At least three copies of the IFB must be given to each prospective bidder [Ref. 8: p. 14.2-1]. IFBs greater than \$5,000.00 must be displayed in a public place [Ref. 5: p. 5.1-1]. IFBs between \$10,000.00 and \$25,000.00 must be displayed in a public place for at least ten days from issuance [Ref. 3: p. 5-1]. Presolicitation notices or "draft" IFBs can be put in the CBD, however, a synopsis must still be done in the CBD prior to issuance of the solicitation [Ref. 3: p. 5-3]. A reasonable time will be given to prospective bidders to prepare and submit a bid. Each contracting office will retain a record of each invitation it issues, distribution of IFBs and additional bidders that IFBs were sent to.

A pre-bid conference may be held, if there is an unusually complex procurement, in order to brief prospective bidders of complicated specifications and requirements. This is done as early as possible after IFBs are issued but before the bids are opened.

Amendment of bids can be done if changes are to be made in specifications, delivery quantities, schedules, and bid and opening dates. If an IFB package is found to be defective or ambiguous, an amendment is warranted. Thus, the amendment must be issued to all bidders to whom IFBs were mailed and it must be displayed in the bid room. This shall be sent before the bid opening. An IFB can be cancelled if there is

no longer a need by the Government or if amendments are of a large enough magnitude to warrant a new IFB. An unfair advantage may not be gained by prospective bidders through an inadvertent release of information from the Government which can prejudice the other bidders.

As prospective bidders receive the IFB package, they must assess their interest in responding and they must also gauge their time for submission of a proper bid. The contractor must read all of the IFB contents, focusing on the description and specification in the package. If the contractor is interested in the required product or service, he begins to formulate a response to the IFB. This is called a bid. It is very important that the contractor respond to everything that is called for in the IFB so as to be judged responsive. This includes responsiveness to the basics such as submitting the bid to the specified Government office and submitting the bid before the exact time of the bid opening as specified in the IFB.

Once the contractor has determined that he will submit a bid, the bid response is prepared. Tedious in nature, is the fact that the bid must comply in all material respects with the IFB. The bid should be executed and submitted according to the IFB instructions only. Once the bid is sent to the designated Government office, a modification or withdrawal can only be made by written or telegraphic notice before the time of bid opening. Bids received in the designated Government office after the exact bid opening time are designated late bids. They are only accepted with verifiable exceptions in the U.S. Postal system. Identifiable late bids are not included in the bid opening and bidders are notified of their lateness.

All bids received before the set time are kept secure. The bid opening officer shall decide when the opening deadline has arrived and will personally perform a public opening of all bids. The bids shall be read aloud to all present in the bid opening room and the bids duly recorded. Interested bidders shall be allowed to publicly examine the bids under Government supervision. As soon after the bid opening, an Abstract of Offers shall be completed and certified to its accuracy by the bid opening officer.

Any bid that fails to meet the essential requirements of the IFB is rejected. The firm-bid rule, which requires that, of bidders whose bids are with those present at bid opening, all bids must remain "as is" during the Government's process of evaluating the bids. This is to prevent a bid being retracted and resubmitted at a lower price. Usually, the contract award is made to the lowest bidder. However, the following processes must be carried out after bid opening:

- 1) "Evaluation of bids for responsiveness

- 2) Determination of the price order of preference
- 3) Evaluation of bids for any non-price evaluation factors
- 4) Determination of the responsibility of any bidders to whom an award is to be made." [Ref. 4: p. 248]

Once those factors are considered, a firm fixed price contract is awarded to the lowest responsive and responsible bidder. The bidder is deemed responsive by the contracting officer when the bidder has responded exactly to the instructions in the IFB. The bidder is deemed responsible through determining his ability to perform and deliver the work and through his ability to finance the cost of the work. The contractor's ability to persevere must also be examined. The low bid award must be most advantageous to the Government, once considering price and price-related factors of the bid response.

E. SUMMARY

The IFB package and its sealed bidding process are rigid and finitely structured to deliver a product or service to the Government at the lowest market price. The process is also concerned in providing fair and open competition to all contractors who see their way to bid. At every point in the sealed bidding process, from determining the Government's exact requirements to the public opening of the bids, the pressure is applied to conform strictly to the governing regulations which impacts severely on both the Government and contractors. Any deviations from the IFB generation process may mean a "trouble-laden" road for that procurement action. The Government must ensure that their customer's need is undeniably identified beyond a shadow of a doubt through specifications, drawings and/or a Statement of Work (SOW). To this end, the Government includes clauses and provisions which try to cover and prevent potential points of future litigation or misunderstandings. The Government also provides a rigid but professional atmosphere after IFB release to prevent contractors from obtaining unfair advantages or prejudicial information over their competitors. The contractor is faced with obtaining IFB packages in their areas of interest and then reading and comprehending them in an effort to determine their interest in formulating a bid. The contractor must sometimes do this within 30 days or less of response time. Each contractor works under a different set of conditions which includes such factors as experience, time and devoted personnel. The contractor may even have further contact with the Government through pre-bid conferences or inquiries about ambiguities in the IFB package. If a response or bid is sent by the contractor, then that contractor,

along with others, must await the bid opening day and the contracting officer's award of the contract.

III. THE NATURE OF THE PROBLEM

A. INTRODUCTION

Few man-made operations in life are "problem-free". Along this line of thinking, the IFB is no exception. In conversations with either the Government or civilian contractors, the subject of the IFB brought about instant conversation and opinion. Opinions, while both positive and negative, seemed to polarize towards the more negative side. Comment was sought from the higher levels of Government procurement policy on down to those who are principals in the IFB document formulation and back over to the users. As in any other regulated field, the need for reforms (if they are needed) becomes most evident when those who are expected to use and conform to the regulation are asked for their comments. When the additional impact of reaping a livelihood from the use of these regulations is added, as in the case of defense contractors, the comments become more pointed and localized.

Concurring with the assumption that there is a continued need and purpose for the sealed bidding process and more specifically, the IFB package, refinement of its current state is a worthwhile effort. Refinement for the sake of reform is not intended in this research. However, improvements in usage, efficiency, understanding and other related factors of the IFB is a goal of this research. To this end both Government and civilian sectors were contacted to provide the reader with the day-to-day working pulse of the IFB package.

B. THE DIFFICULTIES

The IFB package requirements that are in the FAR create certain difficulties for those having to use them. Of particular importance, is the effect the IFB regulations have on those contractors who choose to respond with an offer and those who choose not to respond at all because of the difficulties encountered. This is especially critical when a contractor is trying to decide whether or not to submit an offer for the first time. Contractors with little or no experience in the Government's sealed bidding process quickly find out that they must obtain help and/or training from some source on Government procurement. Presently, this ranges from small business workshops, privately run Government contracting seminars and source material on Government procurement from the Government Printing Office. In small businesses, the president

of the company may be "multi-hatted" and assume the duties of contracting officer. This places a further burden on the entrepreneur when entering into Government sealed bidding due to a lack of time and patience to learn the intricate "system". In the cases of larger corporations, a staff of procurement experts are usually found, whose sole job is to understand Government contracting methods. Many of the staffs are stocked with former DoD procurement professionals who usually have access to company-supported libraries complete with a FAR and its supplements. Those corporations with procurement staffs must continually wage war to keep up with the sealed bidding regulations. Smaller businesses must first identify that they are deficient in the knowledge of Government procurement regulations and then must find a source to learn from. These types of burdens placed on contractors force them to either conform by hiring specialists in Government procurement or drop out of the bidding arena in toto.

Dr. Lamm's research consistently found that contractors were not now involved in Defense business or intended to get out, because of burdensome paperwork and Government bidding methods [Ref. 2: pp. 31, 37]. His paper states:

The bidding process was characterized as cumbersome, rigid, containing impossible requirements, poor availability of drawings and inconsistent drawings. Burdensome paperwork was once again the principal reason for problems with the system, characterized by several page bid packages: need for specialists to review and understand bid requirements; and voluminous, confusing and inconsistent paperwork. [Ref. 2: p. 39]

Dr. Lamm cited one contractor's frustration from a questionnaire which said, "Recent Government quote took 3 wks/100 pages; same industry job 3 hrs/10 page quote." [Ref. 2: p. 40]

C. KEY ISSUES OF THE CONTRACTORS

A follow-up phone interview was held with several of the smaller subcontractors, at Appendix C, surveyed previously by Dr. Lamm. The majority opinion of those contractors echoed their disappointment and frustration with burdensome paperwork and Government bidding methods. Only one contractor, who was contacted, had a favorable comment about the IFB. The following are issues that impacted unfavorably on contractors who were interested in bidding or had previously bid on solicitations.

1. Voluminous Paperwork

Of the contractors contacted, the majority expressed their frustration and dissatisfaction with the shear size of the IFBs. In the majority of cases, the number of pages in an IFB could be viewed as a definite detractor to those who received them. In some cases, the small business contractor felt that the amount of paperwork necessary to respond to such a voluminous bid package overshadowed the cost benefit of a response. One contractor said that the size of the IFB would "scare him off", which rendered the IFB "Dead on Arrival" as soon as it was opened.

2. Specifications

Of those contractors contacted, they continually felt that the specifications provided in the IFB were either outdated, incomprehensible or too detailed, which led to future change orders. The majority seemed to feel that the specifications were outdated, and that presented problems. One contractor said he didn't bid on a solicitation because the specifications called out a commercial item which he couldn't depend upon procuring. The specification's old age made it impossible for him to provide the end item without substitution and complicated waivers and deviations to the specifications. Another contractor complaint stemmed from the specifications being too detailed which didn't allow them to provide the item they already had made. The contractor felt frustrated because he could provide an item he thought would work at a lower cost to the Government. But he wasn't allowed to do this, since the specification called for further detailing that may have added no substantial performance, just additional costs and time input by the contractor. In some cases, the contractors felt that the specifications were incomprehensible, which led to frustrations associated with trying to get their questions answered by a knowledgeable Government agency representative. Many contractors complained that there was no one on the other end of the phone who could answer technically-oriented questions at the contracting agency.

3. Blueprints

Currently, the IFB package includes a microfiche copy of any blueprints or drawings (if needed). The Government has taken the step towards microfiche because of its need to keep up with technological advances, such as microform technology. However, the majority of contractors contacted expressed their disfavor with microfiche. Two contractors said that they had to go to their local public library to use the microfiche reader. This may seem a minor inconvenience, but to those smaller

contractors it is a frustrating problem. While most contractors, along with the Office of Federal Procurement Policy (OFPP), acknowledged the Government's need to stay ahead technologically, they felt that their industry hadn't made the move towards microfiche nor were they contacted by the Government for their opinion when it made the change. Of those contractors who had little or no problems with the microfiche, even they admitted there was a problem when they needed to copy the microfiche. This was a more expensive process than copying hard-copy blueprints. In working with copies of blueprints, most contractors agreed that hard-copy blueprints were preferable.

4. Boilerplate

The overwhelming majority of contractors cited the "boilerplate" or those standard phrases, clauses and provisions in the IFB as a major deterrent and impediment to bidding. One contractor stated that the Government IFB sent to him looked like the Los Angeles telephone book.⁸ Many contractors couldn't cope with the "boilerplate" because of the lack of experienced contracting and legal personnel. Many of them did understand the need for socio-economic provisions such as equal-opportunity and small business stipulations, but they didn't understand the need for the "legalese". Some said that in their commercial dealings those clauses weren't present. This was told to be due to their trust between contractors which included their own good reputation between other subcontractors and prime contractors. However, when questioned, those contractors either admitted that they ignored the legal clauses, betting on no future ramifications, or didn't believe their prime contractor would pursue them. Also, many contractors rested on "past history" in which there had been no business trouble. One contractor even claimed that they would leave the "fine print" to the "legal types" since their business was to machine parts. Another contractor said that he had two people doing the paperwork and ten in the shop producing the product. If he had to deal with Government IFBs, he would have ten doing the paperwork and two producing the product. Some contractors felt that clauses and provisions which were referenced in the IFB were better than providing the full written version in the IFB.

⁸From survey data gathered in *An Analysis of Reasons Companies Refuse to Participate in Defense Business* by Dr. David V. Lamm.

5. Commercial-Style IFBs

In the course of "talking IFBs" with the contractors, many stated that the IFB should be more like "commercial-style" IFBs. When asked to outline a model of a "commercial-style" IFB, most contractors began by saying it was a one page Request for Quotation (RFQ) which normally requested:

- 1) "Best" unit price
- 2) Terms
- 3) Delivery
- 4) Shipping Point
- 5) Freight on Board (F.O.B.)

Their RFQ also included a hardcopy blueprint/specification of the item requested, multiple quantity prices and a deadline for submittal of the bid. Some of the RFQs included quality and 100% inspection standards. The clauses and provisions or "boilerplate" were not included, although the reasons for this ranged from statements that the legal conditions were "implied", the contractors didn't worry about legal matters and that past history hadn't included any legal disputes. One can only infer that the legal conditions were implied where the "fine print" wasn't present on the bid request document.

6. Government Response

Contractors who found questions about the specifications or descriptions in the IFB cited numerous occasions, upon calling the contracting agency, where the contracting personnel were deficient in technical knowledge about the item or service. In other cases, the contractors cited slowness by Government agencies, in responding to their paperwork, as a major frustration.

7. Lack of Government Personnel

When contractors were faced with a Government IFB, many could only "no bid" because of a lack of skilled procurement personnel in their organization. Those small businesses who were "doubling up" personnel to read and answer Government solicitations felt that they were hampered in responding because they didn't have experienced procurement and, in some cases, legal personnel. Some contractors who cannot afford specialized personnel just decided to "shy away" from Government business. Many contractors did have procurement personnel who had dealt with Government at some time in their previous history and believed that it was a necessity having them.

8. Wrong Product Line IFBs

A surprisingly large number of contractors stated they were receiving IFBs that weren't applicable to their product service lines. These contractors weren't sure that their original product line IFB request form was still on file with the contracting agency. As a result, many contractors felt that both they and the Government were expending needless time and money in their reviewing and the Government's sending IFBs that weren't in the contractor's area of interest. When asked by the researcher, contractors agreed that an alternate method of sending them a short synopsis of the solicitation with blueprints first, might be a better method. Under this method, the contractor would then request a complete IFB from the contracting agency if he was interested in bidding. This was just one thought explored.

9. Lack of Time to Respond

Some contractors cited the large, detailed bid package that they had to formulate as a hindrance to submission of a complete bid. They felt that 30 days or less to make a thorough bid package was unrealistic due to the Government's requirements to be covered by their response. The contractor's time spent on researching the specification, to check for errors or ambiguities, reduced their time allotted for a response.

D. CONTRACTOR OPINIONS

The majority of contractor respondents in Dr. Lamm's survey cited the sealed bidding method through which they received the majority of their prime contracts [Ref. 2: p. 87]. They also indicated that most of their problems they encountered were with the Sealed Bidding process [Ref. 2: p. 87].

E. KEY ISSUES WITH GOVERNMENT PERSONNEL

Research of the difficulties in preparing and using the IFB was extended to those Government personnel at Appendix D who generated policies or were involved in some aspect of the IFBs themselves.

1. Policy

At the Office of Federal Procurement Policy (OFPP), the researcher asked a representative of that office about his views on the Sealed Bidding process. The climate in Washington seemed to be one of concern for streamlining or simplifying the general procurement process, as evidenced from the Government's simplification processes that will be mentioned later in Chapter IV. Congress' current mindset

seemed to be one of a "laissez-faire" type of style on the subject of sealed bidding per se. Sealed bidding is viewed by Congress as a structured process that is workable. Congress is not now willing to make radical changes to already existing socio-economic statutes. However, OFPP was currently sponsoring legislation to simplify and consolidate acquisition statutes into one uniform code.⁹ When this researcher talked about the need for streamlining the IFB package, the OFPP representative was very amenable towards any work in that direction. OFPP was not aware of the trend towards IFB disuse at Navy activities, which is discussed later. The main points taken away from that office was a feeling that Congress wants to retain much of the structure of the sealed bidding process because it endorses its competitive market and existing framework and that OFPP wasn't now pursuing any new IFB streamlining initiatives. It appeared, however, that OFPP was very open-minded toward procurement reform and an arrestment of increased legislation.

2. Specifications

Those Government activities who prepare IFBs complained about the need for better and newer specifications. Many of the activities have poor existing specifications from which to draw upon. Where specifications or descriptions are non-existent, Government personnel complain about less-than-adequately detailed specifications or, on the other side of the spectrum, too rigidly detailed specifications after they are prepared. Also of procurement personnel's concern, was that the description or SOW from the customer was less than adequate. The current IFB guidelines enjoin the preparer to make certain that the specification, description or SOW can be thoroughly understood by the bidder. This lent itself toward a prevailing attitude of having the most irrefutably correct description or specification in order to lessen the chance for ambiguity and a contractor dispute later. This thinking tended to make the contract personnel err on the side of conservatism, which accentuated the volume of paper in the IFB package. More than one contracting officer cited the specifications as having enough importance to predict success as well as disaster.

3. Personnel

Government contracting management complained of large workloads placed on their staffs. This volume of work seemed to place workers under a general hurriedness which limited their time to research each IFB. This then retarded their inclination to streamline each individual IFB. Contract personnel were purported to incorporate clauses, both per the regulation and local-specific, or provisions in the IFB

⁹This pending Bill is known as the *Federal Acquisition Act of 1987*.

package because they were "handed down" or "written in" in the working copy of the FAR's margins. This same action was prevalent in those personnel who compiled IFBs through "wrote memorization". Actions which were not tailored to individual IFBs and, in turn, each procurement, seemed to be prevalent and increased IFB package volume.

Additionally, the DoD procurement area was said to be a perfect "training ground" for many procurement specialists. Those civilian contractors looking for trained talent usually benefitted from this fact. With this high turnover rate among DoD procurement specialists, the IFB was further lengthened through less procurement-specific tailoring of each package due to the lack of expertise of some personnel or the lack of sufficient time for review and streamlining.

4. IFB Disuse

Interviews with personnel at several Government contracting agencies uncovered the surprising trend that the IFB has fallen into disuse. At one of the largest Naval Supply Centers (NSCs), personnel explained that only 12 IFBs had been used the entire year. At another NSC, the IFB count was a total of one. This same trend was expressed at other major Navy contracting activities. Reasons for the lack of use closely mirror those frustrations encountered by the contractors. The Government is so worried about adequate specifications, descriptions and SOWs to avert future disputes, that their use has been abandoned. One contracting officer described the lack of IFB use as the need for more competitiveness and quality. He explained that an IFB can essentially turn into a negotiated procurement after excessive amendments and Best and Final Offers (BAFOs). In this situation, the contracting officer spent just as much time, or more, with the sealed bid process then using a Request for Proposal (RFP) negotiated procurement with a performance specification. The contracting officer also felt he had more control over both value and quality received with the RFP method.

One contracting officer felt that the IFB was "competition-restrictive" in that if an IFB bidder was non-responsive, he would be immediately eliminated from the competition. However, in an RFP, more contractors were allowed to stay in the competition by virtue of the more flexible regulations concerning responsiveness and the opportunity for discussions.

5. Administrative

Of less mentioned, but significant concern, is the attendant administrative workloads, problems and costs associated with IFBs. The preciseness in structure of the IFB requires significant man-hour input. Large bidder's lists assure much repetitive work in preparing IFB copies to be sent to each prospective bidder. These IFBs are sent with no assurance that the receiver will even be faintly interested in the solicitation. In one isolated case, a contracting officer recounted a problem when a clerk misplaced the bidder's list after the IFBs had just been sent out. Not knowing to whom the IFB packages had been sent was a large problem alone, however, without knowledge of whom the interested bidders were, the IFB process had to be begun over again with a complete regeneration of the bidder's list from memory and new copies made of the IFB to be sent. This mistake and ensuing administrative problem severely impacted the operational side of the procurement process, not to mention, delaying the customer's need. There is a large and concerted effort, both in personnel time and cost, in generation, sending and processing IFB work.

Finally, pre-bid conferences and any possible involvement concerning subsequent amendment research and generation of those amendments requires more personnel time, effort and monies.

F. DISCUSSION

Much of the contractor's dissatisfaction with IFBs takes the form of frustration with the size and complexity of the IFB document. The contractor has little time to dissect the "boilerplate" from the actual requirement that is needed. Most contractors perform a service or make a product that is acceptable to the civilian sector. In many cases that same service or product would also be acceptable to DoD. However, the difficulty to the contractor arises when the Government asks for the similar product or service, yet attaches too rigid a specification or too many restrictive requirements to that IFB. The contractor disspares because he might feel he can fulfill the Government's request if the system was like the less complicated "commercial" IFBs. The result is that the Government loses a bidder and the contractor loses interest in doing business with the Government; both parties suffer.

As was evident earlier in this chapter, the Government has many concerns with the IFB, many of which are mirror-image in relation to the contractor's. Of growing concern is the idea that the Government spends some 30 to 40 percent of its

procurement costs on paper actions alone.¹⁰ This means that 30 to 40 cents of every procurement tax dollar is spent on nonproductive paperwork "for the file".

G. SUMMARY

The IFB, like any other rigid document, is subject to criticism. However, this document is expected to be used everyday by Government personnel and civilian contractors in an environment, where both work under personnel and cost limitations. It is then beneficial to try to resolve those areas of concern on both sides of the IFB package (IFB preparation and bid submission).

While many contractor and Government key issues were brought out, only the most repetitive and significant were reported. Complaints for the sake of complaining will always be present in a healthy organization, but those types of complaints weren't reported.

The most significant problems of the IFB, which affects both sides, is the shear volume and "boilerplate" of the IFB which stems from the regulatory requirements. Those preparing the IFB must painstakingly hammer and mold the creation, and those receiving the IFB to bid on it must carefully dissect that creation with the skillful art of a surgeon, lest they tire and give up totally.

¹⁰From a Naval Postgraduate School Acquisition Seminar by Mr. Jack Robertson, Washington Editor of the *Electronic News*.

IV. ANALYSES

A. THE ESSENTIALS

When one looks at the essential elements of any document that is made for the purpose of eliciting a response or bid, one must ask for the basics. What are the essential requirements of an IFB? Undoubtedly, one must have a need for an item or service. Once that need is determined, a description or drawing of the service or item is required. Next, that stated requirement must be conveyed to those that can perform or produce that requirement. And finally, a price and delivery must be agreed upon. The final acceptance of the service or item implies that the aforementioned will be of desirable function and quality to the buyer. However simple this may seem, in current conditions this is only a theory or idealistic view of an IFB. Through the Government's need to satisfy its socio-economic desires, fear of litigation through disputed contracts and under the umbrella of fair and open competition, the Government has managed to insulate each IFB solicitation with countless clauses and provisions.

B. A MACRO LOOK

Upon a macro-level examination, the IFB has evolved past the point of functional simplicity long ago. Both the Government and private industry have evolved differently with the growth of the IFB. While Government has continued to use sealed bidding as another means of enforcement of socio-economic goals while maintaining fairness and openness, private industry has evolved another form of it. In this form, private industry's sealed bidding is not always advertised. In fact, private industry can send IFBs to whomever it chooses, can enter into discussions with potential bidders, and can award contracts based on quality/value rather than just the low bid.

Because of the main differences between the Government and private industry in the use of IFBs, there is an avenue for difference and misunderstandings. If industry feels their cause or system has merit, then a need for compromise or reform exists.

C. A MICRO LOOK

Government had realized the need for some procurement reform as early as November 1969. At that time the Commission on Government Procurement (COGP) was created.¹¹ The commission:

"...found a burdensome mass and maze of procurement and procurement-related regulations. There are:

- Too many primary sources of regulations
- Numerous levels of supplementing and implementing regulations
- Numerous collateral procurement-related regulations, issued independently of, but nevertheless affecting the procurement process and organization." [Ref. 9: p. 31]

Four volumes of recommendations and opinions were compiled by the COGP; in the area of sealed bidding some redundant statutes and regulations were identified. However, much of the sealed bidding discussion involved the reaffirmation of its use. [Ref. 9: p. 20]

The findings of the COGP can be paralleled with the frustrations that contractors pointed out in the area of burdensome and voluminous paperwork, excessive "boilerplate" and unintelligible "legalese".

1. Existing Government Streamlining Programs

Since that time, the first real contract simplification initiatives such as the Simplified Competitive Acquisition Technique (SCAT) have been aimed at negotiated procurements.¹²

Applicable, in varying degrees to the types of contractors' problems brought out in this study, are four Office of the Secretary of Defense (OSD) sponsored programs. The following programs deal with contract simplification:

- Model Installation Program (MIP)
- Model Installation Extension Program (MIEP)
- Pilot Contracting Activities Program (PCAP)
- Contract Simplification (CS)

The MIP program gave 16 Navy Department activities the right to request waivers to procurement regulations, policy and laws.¹³ To date, there were no study-

¹¹COGP was created by PL 91-129.

¹²SCAT was sponsored by OFPP, but was not funded under the 99th Congress.

¹³MIP was implemented by Naval Operations Instruction 5200.26 of 15 June 1984.

significant requests for waivers concerning sealed bidding found.¹⁴

The MIEP program extended the MIP program to all other Navy ashore activities.¹⁵ Similar DoD-wide programs exist under the DoD Installation Management policy.¹⁶ For Navy activities under the MIP program the ASN (S&L) can waive FAR and DFARS regulations. Under the MIEP program, all waiver requests must be approved by the Defense Acquisition Regulation (DAR) Council.

The PCAP program allows some 16 Navy activities to request waivers and deviations to regulations from the ASN (S&L). These are regulations not specifically required by law or executive order.

Lastly, a DoD Contract Simplification Program was formed as an annual workshop. To date, two sessions, one in November 1986 and another in October 1987 have been chaired by a Naval Supply Systems Command Headquarters representative. The outgrowth of these workshops have been innovative ideas to simplify and improve the acquisition process. Both workshops didn't provide output pertinent to this study.

Although, as described, there are several acquisition streamlining programs of one form or another in existence, only one program, which is in effect at Naval Supply Center Norfolk, seemed to have the most relevance to this study. It is called the Implementation of the Contract Document Simplification and it is testing a revised contract coversheet and a simplified short form contract.¹⁷ This streamlining program incorporates omnibus clauses and provisions and requests that any additional clauses and provisions should be limited to the absolute minimum necessary. Representations and certifications are incorporated on a new simplification test form. If this program is used by contracting activities, it appears that a savings in paperwork volume and man-hours can be achieved in the IFB package. The program also incorporates a feedback questionnaire for contractor response. This questionnaire is an important tool for activities to receive the contractor's viewpoint.

¹⁴From review of Naval Supply System Command Headquarters files.

¹⁵MIEP was implemented by Naval Operations Instruction 5200.30.

¹⁶DoD Installation Management Policy was implemented by DoD directive 4001.1 of 4 September 1986.

¹⁷This program is locally implemented by Regional Contracting Department Instruction 4270.2 200.3 of 27 November 1984 and was authorized by Naval Material Command ltr 021/RJC of 18 October 1983.

2. Contractors' Proposed Solutions

In examining the contractors' solutions to streamlining the IFB, one could summarize their solutions as centering on the product or service needed. This equated to the contractors wanting an easier time of identifying succinctly, yet with some flexibility, the following from the IFB package:

- 1) What is the product or service being requested?
- 2) Is the product specification or service description understandable [to the contractor] and producible within the required delivery schedule?
- 3) Do I [the contractor] want to bid on the item?

In most cases, the contractors felt that once that thought process was complete and the decision was to submit a bid, then the next hurdle was meeting the bid submission date. However, if there were no complications concerning ambiguous specifications or descriptions, then the process wouldn't be slowed down. The clauses and provisions of the IFB were too complicated and too burdensome to the contractor, for him to really know the full impact of their intended meanings. So once it was determined to submit a bid, only quantity and delivery schedule were the remaining concerns to be dealt with.

In those cases where a contractor decided not to submit a bid, the contractor did so because of the factors already covered in Chapter III. In fact, this can be viewed as a submissive solution to the problem of IFBs--not submitting a bid. Another submissive "solution" contractors used was to ignore the "boilerplate" and "legalese" totally. The researcher felt that these solutions, while employed, were not the prescribed solution in addressing the problem head-on. Rather, those solutions offered the path of least resistance.

The contractors did propose proactive solutions to the IFB problems that they encountered. These solutions, proposed by both those submitting bids and those deciding not to participate in sealed bidding, dealt with paralleling those methods they encounter in subcontractor to prime contractor and subcontractor to subcontractor procurement relationships. This was typified by their suggestions for more "commercial-like" IFBs, where drawings, specifications and descriptions *drove* the process. These IFBs were typically lean on the "boilerplate" or "legalese" and were more clearly understood by contractors since the focus of them was not towards "stipulations and regulations". The emphasis of this "commercial-type" IFB was on the product or service and in enabling the bidder to bid and ultimately, having the offeror

receive a good product or service at a fair price. Whereas, the Government IFB emphasized lesser productive areas such as the "boilerplate" represented. The former ("commercial-type" IFB) emphasized the product or service, the latter (Government IFB) emphasized the means to Government recoupelement should the contractor not perform. The former also emphasized a positive outlook on successful product or service procurement, whereas, the latter approach provided emphasis on "quality in paperwork". The current IFB forces the contractor to "pick out" the salient points, rather than directing them to those points. This adds to potential ambiguities and ultimately, changes.

It was interesting to note that in the contractors' eyes, a streamlined IFB could eliminate many of their related problems such as their administrative expenses to verify ambiguous specifications or increased overhead from hiring procurement and legal professionals. The contractors felt that productive Government emphasis would be in the area of improved specifications, hard-copy blueprints and technically knowledgeable Government procurement personnel. They also emphasized the need for clear lines of communication between themselves and Government, which could be accomplished through a simpler, more understandable IFB package. Also, the contractors suggested having a source to field their suggestions.

In addition to those proposed solutions, the contractors appeared to be favoring an abbreviated IFB package, which would contain a brief synopsis of the requirement *with* appropriate specifications or descriptions, to be sent out to them initially.¹⁸ This "skeletonized" IFB package would "whet their appetite" so that, if interested, they could request a full IFB package, later on. The advantages to this arrangement would be to quickly and efficiently allow the contractor to identify the Government's requirement and in turn, to quickly form their decision whether or not to bid. Once again, this solution expressed the contractors' interest in performing, identifying and producing the product or service needed versus "paperwork prowess". This solution to send out "skeletonized" IFBs would aid contractors by decreasing the turn-around-time for contractor response to the IFB through increased readability and comprehension and give them a head-start while they are awaiting the full IFB package. It would also give the Government contracting activity an indication of the numbers of respondents to an IFB.

¹⁸This abbreviated IFB package was different than the presolicitation notice cited in the FAR Part 14.205-4 (c).

Some contractors expressed a lack of confidence in the Government to be able to break current traditions in sealed bidding, and therefore didn't propose solutions. Those contractors' solutions were expressed daily by "no bids". However, it was fortunate that that attitude was in the minority. For certain, the contractors' majority opinion on a solution for the IFB centered around the elimination of volume, "boilerplate" and "legalese" from the IFB package. They felt, with confidence, that elimination of that area alone would lead to substantial improvement through concentration on communication of the correct specifications and description of the needed product or service. They felt that their time and effort should focus on their production of their particular product or service, whereas, now they must specialize in that *and* procurement "boilerplate" and "legalese" translating.

The contractors proposed solutions appeared to have merit particularly since so many of the IFB problems seemed to hinge on the lack of clarity caused by excessive "boilerplate" and "legalese"--items viewed by the contractors as secondary to the primary importance of the item or service needed. In some cases, contractor misinterpretation of the IFB led to higher costs and prices due to potential unknown incidental costs that had to be included in the bid. With the emphasis off of "paperwork performance", the Government could focus on streamlining and perfecting specifications to promote greater contractor understanding, performance and quality.

D. ANALYSIS BY PART

1. Contractors

The above contract simplification programs, while addressing procurement system generalities of the contractor's points, don't fully address the focus of contractor problems such as specifications, blueprints, commercial-style IFBs, Government responsiveness, lack of Government personnel, wrong product line IFBs and time periods to respond to IFBs previously cited. However, many of these problems were identified in a "macro sense" by David Packard when he espoused his "formula for action" which included streamlining acquisition procedures, less rigid specifications, use of commercial-style competition and enhancing the quality of acquisition personnel [Ref. 1: pp. 52-70].

Comments from contractors regarding the simplification of the IFB package were quite candid and focused. They knew what they wanted changed but they didn't know how to go about it. Their comments were sincere because they wanted to improve the package and the process. Their problems with the IFB processes can be summarized as follows:

- 1) Voluminous size of the IFB
- 2) Over or under-definitized specifications
- 3) Lack of hard-copy blueprints
- 4) Excessive "boilerplate" or "legalese"
- 5) Need for "commercial-style" IFBs
- 6) Slow Government response
- 7) Lack of technically proficient Government personnel
- 8) Wrong IFB product lines sent
- 9) Lack of time to respond to IFBs

2. Government

The Government's problems with the IFB package are the foci of problems that cause the contractor's "symptoms". They are, in some cases, the same problems the contractors experience except the Government is on the "other side of the fence". It appears that the Government may not have a fullproof avenue to receive "feedback" from the contractors at the policy level and at the working level in order to link Government's IFB frustrations with those of industry and to take corrective action.

It would appear from the Government simplification programs in effect that some Government IFB problems have already been heard. These would be:

- 1) Voluminous size of the IFB
- 2) Any problems encountered with current procurement methods that need to be flagged for waiver

However, many of the problems are more specific than the current simplification programs can address. These problems can be summarized as:

- 1) Dealing with the volume size of the IFB
- 2) Over or under-definitized specifications
- 3) Personnel problems
- 4) Administrative problems
- 5) Knowing which clauses and provisions to include
- 6) IFB disuse

3. IFB Problems and Simplification Recommendations

In examining both Government and industry problems with the IFB package, one can re-interpret those problems to be simplification recommendations. When this is done, there is a close parallel between those problems experienced by Government and industry.

For example, industry and Government agree that there is voluminous paperwork associated with an IFB. This volume is impacted by the "boilerplate" and "legalese" associated with the IFB package. This problem adds man-hours for the Government and contractors alike. In the subject area of specifications both the Government and contractors proclaimed the need for better specifications. A "middle ground" needed to be reached between lack of specificity and extreme rigidity. In the area of personnel, the Government cited overworked and undertrained personnel, while industry complained of dealing with Government personnel who possess only a general knowledge of the items they procure. This inhibited the contractor-Government interface. In the area of administrative tasks, the Government talked of tedious, labor-intensive requirements to prepare IFBs. On the opposite side, the contractors spoke of tedious requirements and specialized personnel requirements (such as lawyers and procurement persons) in order to assimilate and respond to an IFB.

More importantly, the summation of all problems with the IFB has led to disuse of the IFB by Government personnel and the disinterest in responding to IFBs by industry. It appears that the IFB and sealed bidding process is being circumvented. Since the problem issues with the process hadn't been aired heretofore, an alternative contracting method (RFPs) filled the void.

E. ANALYSIS IN WHOLE

In analyzing the problems with the IFB cited both by the contractors and the Government it helps to think of those problems as either life-threatening or non-life-threatening to the IFB package and the sealed bidding process as a whole.

One of the life-threatening problems cited by both the Government and the contractors deals with the removal or reduction of contract clauses and provisions. While most contractors agreed that the "boilerplate" and "legalese" should be reduced, total elimination of these clauses and provisions would violate their required inclusion by statute. This would violate the structure of the current IFB regulatory framework. It would also be contrary to the Congress' current regard for IFBs and more specifically, sealed bidding. However, when looking at a related subject, more commercial-style IFBs, which was also recommended by the contractors, adoption of this method would be in line with those thoughts of the Packard Commission. But elimination of the "boilerplate" for a more commercial-style IFB, or whatever one calls it, is still radically different from the current framework. Loss of the "fine print" in contract solicitations would leave the Government exposed and vulnerable to disputes

and litigation. However, to what extent the Government would be prone to further litigation than it already now experiences was not investigated in this study and therefore is not known.

Of the other recommendations to improve the IFB package, the only remaining life-threatening recommendation would be to change the statutory requirement requiring complete IFB package mailing to those on the bidder's lists. Alternatives such as sending partial IFBs to generate contractor requests for complete IFBs or asking contractors to pay for IFB packages goes against existing statutes. However, both of these methods would appear to cut down on man-hours and cost.

In listing the non-life-threatening problems of the IFB, the following can be included in that category. The voluminous paper size of the IFB, ambiguous or too rigid specifications, microfiche blueprints, personnel problems, lack of adequate response time, receiving wrong IFBs for product lines and the remaining others can all be remedied without major surgery to the IFB and sealed bidding process. Solutions can be attained through removal of requirements for clauses and provisions or complete referencing. Specifications can be given more attention, personnel problems can be addressed, blueprints can be offered in hard-copy or microfiche format, bidders mailing lists can be updated more frequently for product line verification, and other compromises can be attained.

The problems, whether life-threatening to the IFB and sealed bidding process or not, are important all the same. Simplification recommendations from the Government and contractors, in the whole, are not new to the Government procurement system. Rather, here they are more focused and thus are more readily identifiable and correctable.

From the problems cited and subsequent recommendations of both contractors and Government personnel, this research indicated a desire to improve the IFB package from both sides, but especially from the contractors. Comparison of the comments during personal interviews, on a general level, seemed to validate past recommendations for procurement streamlining from COGP and the Packard Commission. It also strengthened the need for continued existence of current Government simplification programs with a burning need for focusing on simplification of the IFB package.

This researcher has viewed several IFB packages, and through many interviews from both sides, empathizes with those problems cited by both parties.

F. SUMMARY

The analysis of the key issues or problems, that both contractors of private industry and Government procurement people brought to light, have come to be closely correlated. Correlated in the sense that what is a problem or frustration encountered by Government personnel in the preparation and administration of IFBs, also becomes an extension of those frustrations or problems to contractors who have to read and respond to those IFBs. Essentially, both groups realize the same problematic idiosyncrasies of the IFB, but from different perspectives--offeror versus bidder.

In examining previous and current Government simplification programs, only one program was of significance to this study. That program decreased the paper content of the IFB through simplified standard forms, omnibus clauses and reference of clauses and provisions.

Some of the proposed simplification recommendations are life-threatening to the current framework of the IFB and sealed bidding process. However, several others are not life-threatening to that framework and are simpler to accommodate. This doesn't mean that the tough problems should be ignored.

Those cited problems with the IFB package were well-focused and because of the frequency and sense of urgency with which they were claimed, should be evidence of needed simplification and a firm commitment to resolution of those problems. With both sides identifying similar problems, it would appear that a workable solution could be obtained sooner by working on complimentary streamlining solutions. With each side working towards a solution, they should be able to meet halfway.

V. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

The primary purpose of this thesis was to investigate how the IFB package might be streamlined and to report those methods that would accomplish that end. Streamlining initiatives should include those ideas that would provide efficiency, effectiveness, comprehension and continued use of the IFB. This purpose was completed through interviews with industry and Government personnel and through research of existing literature on the subject. Specific conclusions concerning streamlining the IFB package are included. The researcher has come to make several recommendations based upon these conclusions.

Based upon this research, the following are concluded:

- 1) *From the problems voiced by Government and Industry personnel, there is a need for streamlining the IFB package.*

Original research by Dr. Lamm, which was cited earlier, indicated contractor dissatisfaction with the IFB. This research just completed confirms that earlier research and further indicates a need to take action by Government personnel as well. The fervor and real concern with which both parties offered their comments indicated a desire to make the IFB package an even better solicitation. Industry contractors indicated that they would respond to the IFB package more frequently if changes were made. Government personnel indicated that changes to the IFB would increase their selection of sealed bidding and IFB use.

- 2) *A voluminous IFB package with copious amounts of "boilerplate" or "legalese" deters contractor decision to respond, contractor understanding and timely response to the IFB package.*

The majority of contractors interviewed, cited voluminous and "boilerplate-ridden" IFBs as the "inhibitor" to entering Government business or continuing to seek Government business. Those contractors already responding to IFBs cited decreased understanding and thus a lengthened time to respond while researching IFBs. Those contractors having been involved in Government business or looking to enter were "scared off" by the size and

incomprehensible legal language in the IFB. There appeared to be a lack of need for "fine print" to be totally written out, in the opinions of the contractors.

- 3) *Contractors would like to see the implementation of "commercial-style" IFBs by the Government.*

The majority of contractors are familiar with doing day-to-day business with other contractors via a one page solicitation for bids. These documents are lean on the legal stipulations, but provide blueprints, specifications and other pertinent information in order for them to respond with an intelligent and confident bid.

- 4) *Both Government and Industry need a concerted effort towards providing complete, accurate and non-restrictive specifications in the IFB package.*

The Government complained of not being able to definitize customer specifications or having to draw on obsolete specifications. The contractors complained of obsolete or ambiguous specifications. Much of their time was spent in researching specifications to ferret out those parts that needed updating or clarification. Other comments included specifications that were too rigid and didn't allow contractors to enter their bids.

- 5) *Hard-copy blueprints in the IFB are needed in place of microfiche by contractors.*

Many contractors cited the need for hard-copy blueprints because of a lack of access to microfiche readers, the cost of duplicating microfiche to make copies or the ease with which their review effort could be furthered through its use. While contractors understand advances in technology, their working environment still includes old-fashioned hard-copy blueprints and drawings.

- 6) *Both Government and Industry had problems with personnel.*

The Government cited a high turnover-rate and a hurried workspace as reasons for procurement personnel's lack of expertise in answering technical questions and being able to formulate IFB packages in a streamlined method. The contractors stated that Government procurement personnel were not always helpful in answering technically-related questions pertaining to IFB specifications or descriptions. The contractors also experienced a lack of technical knowledge about procurement methods themselves, due to a lack of experienced procurement or legal personnel in their own organizations.

7) *There are unnecessary added administrative expenditures incurred by both the Government and Industry with the IFB package preparation, response and administration.*

The Government increases its man-hours spent on IFB preparation with unnecessary additions to the basic package through clauses and provisions. These costs are further impacted by the current practice of sending three complete IFB packages to everyone designated on the bidder's list, even when the response to IFBs may be zero. Furthermore, industry personnel assume large administrative costs in responding to IFBs due to the requirements to include more than just a quantity and price in the response to the IFB.

8) *Problems encountered with the IFB have spawned Government and Industry disuse of the IFB and sealed bidding method.*

Frustrations encountered by both Government and contractors in bid preparation and bid responses have decreased Government use of the IFB and has decreased industry interest in responding to IFBs. At the larger NSCs, IFB use is well below that normally expected. Much of that void has been filled by competitive RFPs using performance specifications. It has been reported that greater competition, quality and control is gained by RFPs. This is due to present problems with the IFB and sealed bidding methods. Contractors "shy away" from responding to IFBs because of the shear volume of the IFB, "boilerplate" and the cost/benefit deficits of responding.

9) *IFB disuse is due to a lack of communication.*

As discussed in this study, the basic desire of an IFB is to impart to the bidder what is desired by the issuer and to solicit a proper response from the bidder. Because of problems in the IFB package the communication of those ideas are not being sent efficiently and effectively and the receiver thus isn't able to properly respond. If there is a response, the issuer is frustrated by the bid either through non-responsiveness, lack of quality, or lack of performance.

B. RECOMMENDATIONS

1) *Model IFB without "boilerplate", "legalese" or unwanted paper volume*

Serious consideration should be given to allowing Government agencies to test the effectiveness of generating an IFB which would be void of all clauses and provisions. Anything that would fall into the category of "boilerplate" or "legalese" would not be included. Since there is no known study of the impact

of this move on increased disputes or litigation, this act might be risky. However, the results may increase the acceptance of the IFB and the Government might find that disputes arising from IFBs would stabilize or even decrease. This might, in part, be due to "user friendliness" and acceptance with the new IFB framework.

Furthermore, the Government would be protected from claims of exclusion of a clause in a contract by previous case law known as the "Christian Doctrine".¹⁹ When the meeting of the minds comes together in a contract and if a clause was required to be in the contract, the contract would be read to incorporate it even though it was not physically incorporated in the contract document. [Ref. 10: p. 18]

The costs saved from needless generation of non-productive paper for "the files" must be curtailed. The volume of the IFB could be assured further reduction by patterning the IFB model after those items of the "commercial-style" IFB outlined in Chapter III. This streamlined IFB would include no more than two to three pages.

2) *Modified Model IFB*

If the model IFB described in recommendation (1) was deemed infeasible, the clauses and provisions could be referenced and heavy emphasis should be on mandatory use of contract simplification programs such as the one in effect at NSC Norfolk.

3) *Improved Specifications*

Government should increase emphasis on validation of existing specifications and either update or terminate those in the data bank. Government should also use "Draft IFBs" to use industry as a "sounding board" *before* issuing solicitations. Also, increased use of functional specifications should be fostered to allow contractor competition through less definitized specifications.

Industry should report to the appropriate Government contracting agencies, those specifications that are ambiguous, too rigid, or outdated via responses to "Draft IFBs" or through comment on IFBs.

¹⁹G.L. Christian & Associates v. United States, 160 ct. cl. 1, 312F.2d 418, rehearing denied, 160 ct. cl. 58, 320F.2d 345, cert. denied, 375 U.S. 954 (1963).

4) *Interest Seeking IFBs (ISIFBs)*

The Government should explore the possibility of sending short or "skeletonized", concise synopses, along with blueprints or specifications of the needed service or product to those contractors on the bidder's lists. Interested contractors would then respond back to the agency citing their interest in procuring a complete IFB package for formal bid response. The Government would save the cost in time and preparation of multiple IFB packages being "blindly" sent out to potential bidders.

5) *Charge for IFB packages*

In lieu of or in addition to previous recommendations, the Government could recoupe IFB *preparation costs* by charging contractors to be on bidder's lists, in order to receive IFBs in the mail. This would be a type of bidder "subscription list" with the attendant fee being charged. This would also cut down on cost and improve effectiveness since it would be thought that those contractors with only passing interest would not subscribe. Only those "real" bidders would "join up".

6) *Hard-copy Blueprints*

The Government should explore offering hardcopy blueprints in the IFB to those contractors who request them over microfiche. As more time passes, microfiche may then be able to be phased-in totally.

7) *Personnel*

Government procurement managers should continue to press for professional training and education of its personnel. Managers must not only "talk professional" but they must act it out. Procurement managers who have cognizance over sealed bidding and IFB generation should personally review all IFBs to ensure compliance with streamlining efficiency methods and practices every time. Those personnel actually generating the IFB should devote the necessary time and treat each solicitation individually, to learn and be able to streamline the IFBs. Procurement personnel should also take every opportunity to become technically knowledgeable of the items they are procuring and to become sensitive to the needs of the contractor. Personnel must also become aware of the needless time and money spent by both Government and industry in paper generation for "the files". Finally, Government must also be ready to incur the additional costs per procurement

from the contractor due to his overhead cost of hiring experienced procurement and legal personnel in order to respond to the bureaucratic requirements of current IFB packages.

8) *Clear Lines of Communication*

As in any large organization, communication becomes harder to accomplish. Not only must the Government establish a clear line of communication to industry via excellent IFBs; but today the Government must listen to the reformatory needs of their suppliers--the contractors. Survey questionnaires such as those implemented by NSC Norfolk's contract simplification program, allow the contractor to voice their opinions. These "surveys" which solicit contractor comment on IFB packages should be an ongoing process, not just research tools envoked once in a while. Further, Government procurement managers must at least listen to the contractor's recommendations at all levels within Government procurement. The industry way of doing bidding has existed (without regulatory framework of the Government type) far longer than the Government's IFB and sealed bidding methods of today. There just might be something that the Government could learn from industry's IFB practices.

One such communication opening may have been effected during this research effort. This was experienced when one contractor told the researcher that he hadn't submitted a bid in quite some time. However, he was so enthused to see that the Government was trying to improve IFBs, that he said he would give more attention to entering a bid in the future so that he too could take an active part in achieving reform. We hoped to someday meet halfway.

C. ANSWERS TO RESEARCH QUESTIONS

This study proposed to answer the following research questions in the hope of streamlining the IFB package. The questions and their answers appear below:

1) *How might the Invitation for Bids (IFB) package be streamlined?*

The response to this question is found in Chapter V, Section B through several proposed recommendations.

2) *What are the essential characteristics of the IFB?*

The Government's essential characteristics of the IFB are presented in Chapter II. The contractors' version of this is in Chapter III, Section C (5). A generic description of the IFB essentials is in Chapter IV, Section A.

3) *What is the inherent structure of the bid package (i.e., the statutory and regulatory requirements)?*

A detailed description of this inherent structure of the Government IFB package is laid down in Chapter II.

4) *What are the Government and Navy's concerns in formulating the bid package?*

Those concerns are expressed in Chapter II, Section C.

5) *What are the contractors' difficulties in preparing bids in response to the IFB?*

The contractors' difficulties in preparing bid responses are detailed in Chapter III, Sections B and C.

6) *What methods can and are being utilized by the Government and the Navy to make the bid package, including specifications and drawings, more understandable by the contractors?*

The methods currently being utilized by the Government and the Navy are detailed in Chapter IV, Section C (1). The methods that can be utilized in the future by the Government and the Navy are summarized in Chapter V.

7) *Is the IFB method being utilized by Navy activities?*

This question is answered in Chapter III, Section E (4).

The responses to the research questions are included to aid the reader in the understanding of the thrust of this research. However, this study should be read "in the whole" to provide a full comprehension of the subject, its problems, and its conclusions and proposed recommendations.

D. AREAS FOR FURTHER RESEARCH

The following are areas that are related to this research and need to be targeted for further research so that more can be learned about their effects:

- 1) Further research of the impact on sealed bidding of the elimination of "boilerplate" and "legalese" from IFBs should be conducted. This would include an impact statement on Government/contractor liabilities and the number of current disputes versus predicted numbers of disputes cases.
- 2) Complementary research of the problems with sealed bidding and IFB streamlining at the largest prime contractor level.
- 3) Research of the occurrence of IFB disuse in other DoD departments and Governmental agencies. Related to this is the researching of whether or not a need exists for the sealed bidding method at all, or if other methods should take its place.

- 4) Examination of the additional costs incurred by prime contractors and subcontractors that are passed on to the Government through the utilization of present sealed bidding methods.
- 5) Examination of the cost savings to the Government through utilization of a "skeletonized" IFB or "pay subscription", to be included on a bidder's list.
- 6) Examination of the costs to the Government of providing hard-copy blueprints and microfiche blueprints to those contractors who request them.
- 7) Research and provide initiatives of further Government contract form simplification specifically in IFBs.
- 8) Examination of the effect of the Defense Standardization and Specification Program (DSSP) on specifications and standards improvement, specifically, in the sealed bidding method.²⁰
- 9) Examination of the possibility of establishing a DoD/contractor forum to solicit suggestions for improvement from contractors in the area of sealed bidding and whether or not the cost would justify their existence.

²⁰This program was established by DoD Directive 4120.3 and is a system of specifications and standards used to establish the engineering and technical descriptions of items, methods, processes, materials and practices pertaining to DoD procurement actions.

APPENDIX A

UNIFORM CONTRACT FORMAT

Part I-The Schedule

- a) Solicitation/contract form
- b) Supplies or services and prices
- c) Description/specifications
- d) Packaging and marking
- e) Inspection and acceptance
- f) Deliveries or performance
- g) Contract administration data
- h) Special contract requirements

Part II-Contract Clauses

- i) Contract clauses

Part III-List of Documents, Exhibits, and other attachments

- j) List of Documents, Exhibits, and Other Attachments

Part IV-Representations and Instructions

- k) Representations, certifications, and other statements of bidders
- l) Instructions, conditions, and notices to bidders
- m) Evaluation factors for award

APPENDIX B

STANDARD FORM 33

FAC 84-5

APRIL 1, 1985

FEDERAL ACQUISITION REGULATION (FAR)

53.301-33		1. THIS CONTRACT IS A RATED ORDER UNDER DFARS (15 CFR 350)		2. RATING	3. PAGE OF
4. CONTRACT NO.		5. SOLICITATION NO.		6. REQUISITION/PURCHASE NO.	
7. ISSUED BY		8. TYPE OF SOLICITATION CODE		9. DATE ISSUED	
		<input type="checkbox"/> SEALED BID (RFB) <input type="checkbox"/> NEGOTIATED (RFPI)			
				10. ADDRESS OFFER TO (if other than Item 7)	

NOTE: In sealed bid solicitations, "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ local time _____ (Hour) (Date)

CAUTION - LATE Submissions, Modifications and Withdrawals See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL		A. NAME		B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)	
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11. TABLE OF CONTENTS

(i) SEC	DESCRIPTION	PAGE(S)	(i) SEC	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE					
A	SOLICITATION/CONTRACT FORM		I	CONTRACT CLAUSES	
B	SUPPLIES OR SERVICES AND PRICES/COSTS		II	LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH	
C	DESCRIPTION/SPECS/WORK STATEMENT		J	LIST OF ATTACHMENTS	
D	PACKAGING AND MARKING		III	REPRESENTATIONS AND INSTRUCTIONS	
E	INSPECTION AND ACCEPTANCE		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
F	DELIVERIES OR PERFORMANCE		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
G	CONTRACT ADMINISTRATION DATA		M	EVALUATION FACTORS FOR AWARD	
H	SPECIAL CONTRACT REQUIREMENTS				

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions of 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section J, Clause No. 52.232-8)		10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS
		%	%	%	%

14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)		AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)		

15B. TELEPHONE NO. (Include area code)	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE. ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE

19. ACCEPTED AS TO ITEMS NUMBERED

20. AMOUNT

21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

23. SUBMIT INVOICES TO ADDRESS SHOWN IN

(4 copies unless otherwise specified)

24. ADMINISTERED BY (if other than Item 7) CODE

25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER (Type or Print)

27. UNITED STATES OF AMERICA

28. AWARD DATE

(Signature of Contracting Officer)

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064

PREVIOUS EDITION NOT USABLE

33-132

STANDARD FORM 33 (REV. 4-85)

Prescribed by GSA

PAR (48 CFR) 53.214(c)

53-22

APPENDIX C

CONTRACTORS INTERVIEWED

- Mr. Robert A. Boguski, Sr.
President
Apogee Engineering
San Jose, CA
Interview Granted: 4 November 1987
- Mr. Kenneth M. Yost
President
Copp Industrial Manufacturing
Pomona, CA
Interview Granted: 4 November 1987
- Mr. David W. Bulechek
President
Saronix
Palo Alto, CA
Interview Granted: 4 November 1987
- Mr. Otto Seibold
Position Unknown
Meekland Tool and Die, Inc.
Hayward, CA
Interview Granted: 4 November 1987
- Mr. Robert E. Blake
Executive Vice-President
General Engineering and Machine Works
San Francisco, CA
Interview Granted: 4 November 1987
- Mr. Tim Turman
President
Copa Tool, Inc.
Walled Lake, MI
Interview Granted: 6 November 1987
- Mr. Ronald Hornbeck
President
Rockford Jobbing Service
Rockford, IL
Interview Granted: 20 August 1987

- Ms. Sandi Thibault
Vice-President
Tetco, Inc.
Bristol, CT
Interview Granted: 6 November 1987
- Mr. Stephen D. Worthington
Federal Government Bid Manager
Technology Services, Inc.
Chantilly, VA
Interview Granted: 9 November 1987
- Mr. Ron Brown
President
Watts Machine, Inc.
Houston, TX
Interview Granted: 9 November 1987

APPENDIX D

GOVERNMENT PERSONNEL INTERVIEWED

- Mr. William S. Coleman, Jr.
Deputy Associate Administrator
Office of Federal Procurement Policy
Washington, DC
Interview Granted: 25 September 1987
- LCDR John C. Runyan, SC, USN
Director of Small Purchase
Naval Supply Center
Norfolk, VA
Interview Granted: 29 September 1987
- Mr. Bob Hayes
Contracting Officer/Negotiations
Naval Regional Contracting Center
Long Beach, CA
Interview Granted: 21 May 1987
- LCDR Rhys C. Sueur, SC, USN
LT Ronald J. Stearns, SC, USN
Directors of the Acquisition Division
Ms. Janet Weaver
Deputy Director of the Acquisition Division
Naval Supply Center
Oakland, CA
Interviews Granted: 4 May 1987/8 September 1987/12 November 1987
- LCDR Patrick J. Flanagan, SC, USN
Director, Regional Contracting Department
Ms. Colleen McKee
Contract Specialist, Contracts Division
Naval Supply Center
Puget Sound, WA
Interviews Granted: 31 July 1987/20 August 1987
- CDR Marvin E. McWherter, SC, USN
Director of Purchasing
Naval Supply Center
San Diego, CA
Interview Granted: 3 September 1987

- Dr. Norman Brown
Director of Compliance, Competition Advocate General
Mr. Dick Moye
Deputy Director, Contracts & Business Policy Division
CDR Walter C. Knight, SC, USN
Assistant Director, Contracts & Business Review Division
Assistant Secretary of the Navy for Shipbuilding and Logistics
Washington, DC
Interviews Granted: 25 September 1987
- Ms. Pat Honda
Model Installation Program Manager (Procurement)
Naval Supply Systems Command Headquarters
Washington, DC
Interview Granted: 25 September 1987
- Mr. Bob Frakes
Ms. Laureen Burke
Model Installation Program Managers
Western Naval Facilities Engineering Command
San Bruno, CA
Interviews Granted: 7-8 October 1987

LIST OF REFERENCES

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6. Office of Federal Procurement Policy Room 9013, NEOB 726 Jackson Place, N.W. Washington, DC 20503 ATTN: Mr. William S. Coleman, Jr.	1
7. Naval Supply Systems Command Headquarters Code SUP-02 Washington, DC 20376-5000 ATTN: Mr. T.A. Kallmeyer	1
8. LT David M. Fitzgerald, SC, USN 300 Glenwood Circle, Apartment 279 Monterey, CA 93940	2

END

DATE

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